

# **EXHIBIT 40**

## EXCLUSIVE

## Canadian accused of bribing cabinet minister in India



Indian Aviation Minister Praful Patel, left, and Punjab Chief Minister Amrinder Singh mark Air India's resumption of flights from Amritsar to Toronto, at the Rajasansi International Airport in Amritsar, on May 15, 2005.

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This article was published more than 9 years ago. Some information in it may no longer be current.

The RCMP have implicated a Canadian tech executive in an alleged bribery and bid-rigging scheme that involves prominent public figures in India at a time when outrage over corruption has paralyzed its Parliament.

The federal Justice Department is planning to prosecute businessman Nazir Karigar, an Indian-born Canadian citizen on charges that he violated the Corruption of Foreign Public Officials Act – a law that forbids the payment of bribes abroad. The case is scheduled to be heard at Ottawa's Ontario Superior Court of Justice in September.

More than four years in the making, the case involves Mr. Karigar, a 64-year-old entrepreneur, as well as an undercover FBI sting, a bankrupt Ottawa-area tech firm, a former Mumbai police chief and an Indian cabinet minister sometimes referred to as the "Beedi King."

The case is part of Canada's effort to combat its image of being lenient on foreign corruption. In response to criticism from the Organization for Economic Co-operation and Development and groups such as Transparency International, an international NGO that monitors corruption, the Mounties have dedicated more than a dozen officers exclusively to investigate people and companies who are suspected of paying bribes abroad.

The allegations against Mr. Karigar come as Canada's Conservative government seeks to forge closer ties with India and gain access to its booming economy. In a speech in Davos, Switzerland, last week, Prime Minister Stephen Harper said a free-trade agreement with India's ruling coalition government was a major objective for Canada.

## THE PLAYERS

Authorities allege that Mr. Karigar described to others how he funnelled a \$250,000 bribe to Praful Patel, India's Minister of Heavy Industries and a former minister of aviation.

The case against Mr. Karigar has ensnared another household name in India – Hasan Gafoor, a former Mumbai police commissioner who oversaw the force during the terrorist attacks on his city in 2008. Mr. Gafoor conspired with Mr. Karigar to rig a contract worth \$100-million (U.S.), the Royal Canadian Mounted Police said. When contacted, Mr. Patel and Mr. Gafoor said they have no knowledge of the alleged scheme and that The Globe and Mail's inquiries were the first they had heard about the allegations.

In an interview at his office in New Delhi, Mr. Patel said he was baffled that Canadian authorities could implicate him in an alleged bribery scheme that he had never heard of.

"How can my name be drawn into something that is absolutely false? I'm in public life. I cannot be dragged into such issues and these allegations which are absolutely baseless and false," said Mr. Patel, who repeatedly added that he will explore "legal options" about how to respond.

In a letter to Prime Minister Manmohan Singh published on an Indian media website, Mr. Patel denied the bribery allegations, calling them "baseless and false."

## WHERE IT ALL BEGAN

Few details about the case are available to the public. In 2010, the Mounties announced they had charged Mr. Karigar, but declined to say whom he had allegedly bribed, what contract he was seeking, or for whom he was working. A planned press conference about the charge was abruptly cancelled the morning it was scheduled to take place. A search warrant related to the case has been sealed by court order.

Interviews with a number of sources close to the investigation, as well as a review of documents filed in two legal proceedings in the United States, have revealed that the charge relates to Mr. Karigar's work on behalf of CryptoMetrics, a high-tech security company that was pursuing a \$100-million contract with Air India for a facial-recognition security system. The privately owned company, which had offices in the New York area, Ottawa and Mumbai until it became the focus of two criminal investigations, declared bankruptcy shortly after Mr. Karigar was charged.

Authorities allege that as head of the company's Indian operations, Mr. Karigar spoke openly to others about channelling a bribe to Mr. Patel through a political ally in order to influence approval of the contract. They also contend that he paid hundreds of thousands of dollars to two Air India officials and conspired with Mr. Gafoor, a childhood friend of Mr. Karigar's who was then director of security for Air India, in an unsuccessful bid to ensure CryptoMetrics was awarded the lucrative deal.

In a telephone interview, Mr. Gafoor denied helping Mr. Karigar rig the contract in favour of CryptoMetrics, saying that another department at Air India was responsible for awarding such contracts. He said he hadn't spoken to Mr. Karigar in two or three years, and was unaware that he had been implicated in a criminal conspiracy with his friend. "My God," he said, when told of the corruption allegations. He repeatedly pointed out that he had left Air India when the contract was still up for grabs, and that the airline ultimately abandoned its plans for such a system. "CryptoMetrics didn't get it, nor did anything come of it," he said.

## FIGHTING ALLEGATIONS OF CORRUPTION IN INDIA ... FROM CANADA

The allegations come at a particularly sensitive time in India. Public outrage at a series of massive graft scandals – including one in which the then-telecommunications minister allegedly rigged the auction of the country's cellular-telephone licenses to enrich himself and his cronies at the cost of \$32-billion in taxpayers' money – as well as frustration with bribes to obtain basic services – have made corruption the country's dominant political issue. The last two sessions of Parliament have been hijacked by bickering over anti-corruption legislation that remains unpassed. Over the past year demonstrators have repeatedly filled the streets of Delhi and other major cities led by the elderly activist Anna Hazare, who has staged a series of hunger strikes in a bid to force the government to act.

Mr. Karigar's trial in Ottawa will offer Indians a rare look into the mechanics of an alleged case of high-level corruption. When law-enforcement agencies do conduct such investigations in India, they rarely make the details public.

For Canada, Mr. Karigar's trial will be the first legal test of this country's foreign anti-corruption law, which was introduced in 1999. The Mounties have registered two convictions, but in both cases their targets were corporations, not individuals. Mr. Karigar is the first person to plead not guilty to the offence. The RCMP's anti-corruption team was largely responsible for securing a precedent-setting fine of \$9.5-million against Calgary-based oil and gas company Niko Resources, which pleaded guilty in June to bribing a Bangladeshi energy minister.

The extraterritorial law, one of the few on Canada's books, applies to both bribes and attempted payments.

In a motion due to be heard in April, Mr. Karigar will be the first to challenge the reach of the law, arguing that Canadian authorities have no jurisdiction over something that takes place on the other side of the world.

For someone to be guilty of breaking Canada's anti-corruption law there must be a "real and substantial link" between Canada and the alleged bribe, a condition that has not been met in Mr. Karigar's case, his lawyer argues.

"The charges against Mr. Karigar are going to be very difficult to prove, because right now, as the law stands, the government is required to prove that link and I'm not sure how they can prove that link," Martin Reesink, Mr. Karigar's criminal defence lawyer, said in an interview.

The RCMP said it will not comment on cases before the court.



## THE CASE

The allegations against Mr. Karigar date back to 2005. He had emigrated to Canada three decades earlier and begun a varied and successful career designing software for insurance companies. But in 2005, he went home for a visit to his native Maharashtra, in central India, and reconnected with his childhood friend Mr. Gafoor, a senior police officer then on deputation to Air India.

Mr. Karigar and Mr. Gafoor grew up in elite families in the mill town of Solapur in central India. Mr. Karigar is the son of a wealthy industrialist who once owned a rubber factory as well as textile mills, while Mr. Gafoor is the son of Solapur's collector, a high-ranking public official in charge of revenue collection and issuing permits.

In the summer of 2005, Mr. Karigar allegedly approached the Ottawa office of CryptoMetrics and alerted the company that Air India was planning on issuing a request for proposals for a cutting-edge security system that could identify passengers, and potential threats, by analyzing their faces. When CryptoMetrics contacted Mr. Gafoor's security office at Air India about the opportunity, he referred the company back to Mr. Karigar, describing his expertise in the proposed project, investigators allege.

Mr. Gafoor acknowledged being friends with Mr. Karigar, but said he didn't think he alerted his friend to Air India's plans or encouraged anyone to work with him. "It was a very open thing. We [advertised] it in the newspaper and on the Net. It's not that somebody comes to know about it from me."

But the Mounties allege that the purportedly open and fair competition had a predetermined outcome.

CryptoMetrics received an internal draft copy of the Air India tender two months before it was officially released to other potential bidders, the RCMP allege. They also contend that at least \$250,000 was wired by CryptoMetrics to India and distributed to Mr. Gafoor's Air India co-workers, including a deputy in the security division, to ensure that CryptoMetrics was one of the only companies qualified to bid on the contract.

As another incentive, they say, Mr. Karigar and CryptoMetrics invited Air India officials to become part owners in CryptoMetrics. At the time, the security company was preparing to go public and hoped to coincide the IPO with an announcement about the lucrative Air India

contract. Airline officials were encouraged to get in on the expected windfall and were offered shares, authorities say.

Mr. Gafoor denied knowing about any bribes paid by Mr. Karigar to his staff.

The Mounties say Mr. Karigar's alleged inducements ensured that only two companies were short-listed for the contract – CryptoMetrics and a lesser-known Canadian firm, Ipcon. The latter was in fact a dormant Ontario company founded by Mr. Karigar, revived as a straw-man competitor that could legitimize the competition, investigators allege. CryptoMetrics went so far as to scout out recently vacated offices in Ottawa's tech-dominated suburb of Kanata so that, in a pinch, they could prove to any inquisitive minds that Ipcon actually had an office, authorities allege.

## MR. BEEDI

In an effort to finalize the deal, Mr. Karigar is alleged to have sought out Mr. Patel – the then-minister of aviation and chief political overseer of Air India. In the society pages, Mr. Patel is a frequently photographed member of the Indian establishment. The weddings of his two eldest daughters were attended by a who's who of political leaders and Bollywood stars, and his residence and commercial office tower in Mumbai, known as Ceejay House, is a gleaming 14-storey symbol of India's ascent. The son of a wealthy politician and tobacco magnate, he is sometimes called the "Beedi King" in the India media, a reference to the leaf-wrapped cigarette popular in South Asia.

To his detractors, however, he is the minister who oversaw Air India as it became buried in debt while his private enterprises thrived. Indian cabinet ministers are required by law to publicly declare the value of their assets, and in two years – from April, 2009, to April, 2011 – the wealth reported by Mr. Patel grew from \$15-million to about \$23-million. His family has been accused of using Air India as their own personal transportation service. In April, 2010, a scheduled Air India flight was cancelled, delaying passengers, so that Mr. Patel's daughter, who worked for India's professional cricket league, and several cricket players could use the plane as a paid charter.

Investigators allege that in early 2007 Mr. Karigar met with Mr. Patel, along with one of the politician's political allies, Laxman Dhoble. Later, Mr. Karigar described to others – including one co-operating witness from CryptoMetrics – how he gave \$250,000 to Mr. Dhoble to pass on to Mr. Patel so the minister would use his influence to make the project happen.

Part of the movement of that \$250,000 has been documented in a lawsuit in the Supreme Court of New York. CryptoMetrics sued Mr. Karigar in 2007, saying it paid him \$250,000 on the condition that the Air India contract would be signed within days. As part of the lawsuit, the company filed several e-mail exhibits, including one in which Mr. Karigar explains to CryptoMetrics executives that "the money is now in escrow with Dhoble." There is no evidence in the court records that shows Mr. Patel received those funds.

In the interview at his ministerial office, Mr. Patel insisted that as minister of aviation he had nothing to do with such equipment purchases at Air India, explaining "it would not have come to my knowledge. ... The files don't even come to the government of India, to the Ministry of Civil Aviation. ... A contract like this would never have come to the ministry or the minister, ever."

Mr. Patel speculated that Mr. Karigar must have been dropping his name with CryptoMetrics in order to justify receiving more money. "This is, I think, a smart con job done by somebody to convince his bosses or ... his principals or his company. You know, 'I need to pay money in India.' This is my impression," he said.

Mr. Dhoble, in a brief telephone interview, declined to comment on the allegations in detail, and would only say "I met him at a function" without specifying to whom he was referring.

## THE STING

The first person to bring Mr. Karigar to the attention of the authorities was a diplomat from the Canadian consulate in Mumbai. A Canadian trade commissioner, Annie Dubé, had been trying to advance the cause of CryptoMetrics before there was any suggestion of corruption. At one of his final meetings with Ms. Dubé in 2007, Mr. Karigar is alleged to have told her that he had bribed Mr. Patel. The diplomat informed her superiors, prompting the RCMP probe.

The next person to tip the police was Mr. Karigar.

As the relationship between Mr. Karigar and CryptoMetrics further disintegrated, he attempted to blow the whistle on his former employer, according to authorities. He sent a series of anonymous e-mails to the U.S. Department of Justice – from the address [craftysmiles@yahoo.com](mailto:craftysmiles@yahoo.com) and signing off as "Buddy" – alleging that CryptoMetrics had paid \$250,000 to "the minister to 'bless' the system." Authorities later concluded that Mr. Karigar was behind the e-mails, but did not take him up on his offer to meet in the United States.



Those disclosures led to a sweeping, co-ordinated investigation by both the RCMP and the FBI. The United States has aggressively enforced its foreign bribery law, the Foreign Corrupt Practices Act, and a head office in Tuckahoe, N.Y., allowed the FBI to investigate CryptoMetrics and its U.S. executives. One of them, a company vice-president named Dario Berini, was the focus of a sting during one of his trips to the company's Ottawa office in 2008.

At the Ottawa airport, Mr. Berini was drawn into a lengthy conversation with a curious stranger interested in Mr. Berini's experiences in India. In fact, the man was an undercover FBI agent, and had been planted as part of the agency's probe. Mr. Berini has since co-operated and provided statements to the authorities. The FBI and the RCMP later executed simultaneous searches on the offices of CryptoMetrics in Ottawa and Tuckahoe, just outside New York.

Neither the company nor any of its executives have been charged in the United States or in Canada. When Mr. Karigar was charged in 2010, RCMP Corporal Brigitte Gauvin told The Globe and Mail that more charges were expected, but none has been laid. In its bankruptcy disclosure filings, the company acknowledged that it was also being probed by the U.S. Department of Justice over payments made in the United Arab Emirates. In the same records, company lawyers described how, under the company's previous management, "significant sums of money were paid out to agents and other persons around the world that appear to have been wasted funds and perhaps subsidized illegal activities."

## THE ACCUSED'S PERSPECTIVE

It is unclear what the Indian government knows, if anything, about its leaders being enmeshed in the international criminal probe. The RCMP declined to say what talks, if any, it has had with the Indian government. Mr. Patel and Mr. Gafoor both said that they have never been contacted by Canadian or Indian investigators in relation to the file.

Though the case threatens the reputations of powerful and wealthy Indian leaders, Mr. Karigar's defence is operating on a shoestring budget. He is relying on funding from Legal Aid Ontario. On bail awaiting trial, he is living in the house of an old schoolmate from India.

In an interview at his lawyer's office, Mr. Karigar declined, on the advice of that lawyer, to answer any questions that touched on the details of the charge he faces. He did offer his perspective on Canada's anti-bribery law, and whether it can curb corruption in his native country.

"I don't think a law in Canada is going to change a country like India. That has to come from within India – and it's so much engrained in the daily life in India that it's almost difficult, I'll say impossible, to change in one generation," he said.

"It's an accepted thing. It's a way of life."

*Editor's Note: An earlier online version of this story incorrectly said a letter from Praful Patel to Indian Prime Minister Manmohan Singh appeared on a Wall Street Journal website. This version has been corrected.*

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